

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

WILLIAM O. LOVELACE,)	
)	
<i>Plaintiff,</i>)	
)	Case No. 1:07-cv-260
v.)	
)	Judge Mattice
STATE OF TENNESSEE,)	
)	
<i>Defendant.</i>)	

MEMORANDUM AND ORDER

I. Procedural Background

Plaintiff, William O. Lovelace, initiated the instant suit on October 30, 2007. [Court Doc. 1.] More than 120 days have passed since the complaint was filed, but there is no evidence in the record to suggest that Plaintiff has served the Defendant with a copy of the Complaint and Summons. On September 10, 2008, the Court entered a show cause order which required Plaintiff to show good cause as to why his Complaint should not be dismissed. [Court Doc. 2, Show Cause Order.] On September 17, 2008, Plaintiff's counsel responded to the Court's Order. Plaintiff's counsel, Denny E. Mobbs, notified the Court that he "inadvertently failed to mail or personally serve the Complaint and the Summons upon Defendant." [Court Doc. 3, Pl.'s Resp. to Show Cause Order.] To date, there is no evidence in the record that Plaintiff has served Defendant with a copy of the Complaint and Summons for the instant case.

II. Analysis

Federal Rule of Civil Procedure 4(m) provides, in pertinent part, as follows:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court,

upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Thus, pursuant to Rule 4(m), if a plaintiff has not timely served a defendant and shows good cause for such failure, the Court must extend the time for service. If, however, no good cause for such failure is shown, Rule 4(m) permits the Court to choose, in its discretion, either to dismiss the action without prejudice as to that defendant or to direct that service be effected within a specified time.

In this case, even after Plaintiff's counsel responded to the Court's Show Cause Order, there is still no evidence in the record that Plaintiff has timely served Defendant State of Tennessee. Therefore, the Court finds that Plaintiff has not provided good cause for his failure to timely serve Defendant. As a result, pursuant to Rule 4(m), the Court is within its power to dismiss without prejudice Plaintiff's action.

III. Conclusion

Accordingly, for the reasons explained above, it is **ORDERED** that Plaintiff's complaint is **DISMISSED WITHOUT PREJUDICE** [Court Doc. 1] pursuant to Federal Rule of Civil Procedure 4(m). The Clerk is directed to close the file in this case.

SO ORDERED this 5th day of August, 2009.

/s/Harry S. Mattice, Jr.
HARRY S. MATTICE, JR.
UNITED STATES DISTRICT JUDGE